

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

Philip R. McHugh,

Plaintiff,

v.

Case No. 1:21-cv-00238

Judge Michael R. Barrett

Fifth Third Bancorp., et al.,

Defendants.

ORDER

Pending before the Court is Defendants' Motion for Protective Order and/or to Limit Discovery under Rule 23(b)(2)(C) Precluding Additional Director Depositions. (Doc. 66). Plaintiff has responded in opposition (Doc. 69), and Defendants have replied (Doc. 70), all in the normal course. The undersigned has reviewed the parties' papers and will render a decision as the demands of the Court's docket permit.

The issue of whether Plaintiff can depose Susan Zaunbrecher has already been decided, however.¹ As the Court understands it, Ms. Zaunbrecher will testify at trial in support of Defendants' abuse-of-process counterclaim. Accordingly, Plaintiff is entitled to depose her, subject to attorney-client privilege constraints.²

¹ (See 12/14/2023 Minute Entry and NOTATION ORDER ("deposition of Executive Vice President and Chief Legal Officer Susan Zaunbrecher to proceed on the topic discussed") & Transcript of Proceedings, Discovery Conference via Telephone held Thursday, December 14, 2023, Doc. 38 PAGEID 2318–22 (11:16–15:13)).

² (See 02/05/2024 Minute Entry and NOTATION ORDER ("the Court will again review (for attorney-client privilege) text messages between Executive Vice President and Chief Legal Officer Susan Zaunbrecher and Bank employees") & Transcript of Proceedings, Discovery Conference via Telephone held Wednesday, February 5, 2024, Doc. 42 PAGEID 2391 (12:9–25), 2393 (14:1–2); 02/08/2024 Minute Entry (for *ex parte* Discovery Conference held on 2/7/2024) and NOTATION ORDER ("as a precautionary measure, defense counsel to provide to the Court an additional copy of all emails sent to or by Executive Vice President and Chief Legal Officer Susan Zaunbrecher, to include emails on which she is copied, subject, of course, to the agreed-upon search terms; defense counsel also to provide the Court with a log of the Zaunbrecher emails that Defendants believe are protected by attorney-client privilege.")).

The Court hereby **ORDERS** Ms. Zaunbrecher to sit for a deposition no later than October 31, 2024. If counsel cannot settle on a date themselves, the Court will order one without consultation as to counsel's or the deponent's calendar availability.

IT IS SO ORDERED.

/s/ Michael R. Barrett
JUDGE MICHAEL R. BARRETT